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CLEARINGHOUSE RULE 95-193

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Section NR 162.03 (58) is not in proper format. The paragraphs should be renumbered as pars. (a) to (d). Also, in sub. (58) (d), either “, Stats.” should be deleted or there is material missing.

b. In s. NR 162.03 (61), the parenthetical notations should be deleted and a comma should be inserted before the phrase “including land.”

c. Section NR 162.05 (2) uses the phrase “the specified percentage.” To what does this phrase refer? An appropriate cross-reference should be included in sub. (2), if possible.

d. In s. NR 162.06 (2) (a) 1. to 5., “will” should be deleted in each of these subdivisions and “will” should be inserted following “municipality” in par. (a) (intro.).

e. Section NR 162.07 (1) exhibits a problem that occurs throughout the rule. The introductory material in sub. (1) does not grammatically lead into the following paragraphs. Consequently, the introductory material should be renumbered as par. (a) and the following paragraphs should be renumbered accordingly. Also, in sub. (1) (a), the word “and” should conclude subd. 28. In general, it is useful in introductory clauses to use either the phrase “all of the following” or the phrase “any of the following.” The use of these phrases allows the drafter to conclude each following subunit of the rule with a period.

f. In s. NR 162.07 (1) (a) 4., a cross-reference should be inserted to the “Wisconsin environmental policy act.”

g. In the Note to s. NR 162.07 (1) (c) 2., “Disputes concerning eligibility” should be deleted. A note does not require a title.

h. In s. NR 162.07 (3), the title is not in proper format. Subsection titles are written in solid capital letters with no underscore. [See s. 1.05 (2) (c), Manual.]

i. The title to s. NR 162.07 (4) is not in proper format. “4. Cost proration” should be replaced by “(4) COST PRORATION.” Also, the notation “sub. 3” should be replaced by the cross-reference “sub. (3).”

j. In s. NR 162.10 (4), the notation “, Wis. Adm. Code” should be deleted.

k. In s. NR 162.11 (6) (c), “will” should be deleted in the third line.

l. In s. NR 162.12 (4) (a), the word “them” should be replaced by the word “it.”

m. Section NR 162.13 (2) refers to “limits established by the department.” To what limits does this phrase refer? An appropriate cross-reference should be used, if possible.

n. In s. NR 162.14 (4), it appears that a word is missing before the phrase “financial assistance.” Also, the word “agreement’s” should be replaced by the phrase “agreement is.” Finally, the subsection should conclude with a period.

o. Section NR 162.15 (1) (o) states that a particular publication has been incorporated by reference in ch. NR 162. The department should ensure that the requirements of s. 227.21, Stats., have been met.

p. In s. NR 162.20 (4), the phrase “, at their option,” is unnecessary and should be deleted. Also, to what does the phrase “state of Wisconsin single audit guidelines” refer? An appropriate cross-reference should be used, if possible.

q. In s. NR 162.22 (intro.), the phrase “or the regulations promulgated under those statutes” should be replaced by an appropriate cross-reference.

r. In s. NR 162.23, the cross-reference to chs. NR 162, 163 and 165 should be expressed as “this chapter and chs. NR 163 and 165” or “this chapter or ch. NR 163 or 165” as appropriate.

s. In s. NR 162.24 (2) and (3), “may not be” should be replaced by “is not.”

t. In s. NR 162.25 (2) (a), “during 1989” should be deleted.

u. Section NR 162.25 (3) (c) refers to federal statutes “as amended.” If the department intends to incorporate by reference future amendments to federal statutes, the validity of such an incorporation may be questioned. [See s. 2.08 (5), Manual, and see other examples of the use of the phrase “as amended” in the rule.]

v. In s. NR 162.25 (4) (a), “shall be” should be replaced by “is.”

w. In s. NR 163.03, the introductory material should be rewritten to read: “Definitions of terms used in ch. NR 162 apply to terms used in this chapter. In addition:”. [See also s. NR 165.03.]

x. In s. NR 163.05 (3) (a) 2. b., “has” should be deleted.

y. In s. NR 163.07 (1), to what does the phrase “the funding policy” refer? An appropriate cross-reference should be used, if possible.

z. In s. NR 163.10 (2), “no less than zero and” should be deleted.

aa. In s. NR 163.11 (1), the notation “NR” should be inserted before the numerical cross-references.

ab. In s. NR 163.14 (3), the title should be deleted if titles will not be used in the remaining subsections.

ac. In s. NR 165.02, the notation “NR” should be inserted before the number “162.”

ad. In s. NR 165.03 (1) (e), the Note is substantive and should be incorporated into the text of the rule.

ae. In s. NR 165.05 (1) (d), a cross-reference should be inserted to the “Wisconsin environmental policy act.”

af. In s. NR 165.09 (10), the acronyms should be fully spelled out.

ag. In s. NR 165.10 (4), the title should be deleted if titles will not be used in the remaining subsections.

ah. In s. NR 165.11 (5) (b), the phrase “applicable state statutes” should be replaced by an appropriate cross-reference.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 162.03 (10) and (12), the word “significantly” and the phrase “small commercial” are vague. Can more definitive language be used?

b. In s. NR 162.09 (1), the phrase “of the date” should be replaced by the phrase “after the date.” This is a more accurate expression of the intent of the rule and the entire rule should be reviewed for this change.

c. In s. NR 162.10 (1), should the word “or” be replaced by the word “and”?

d. In s. NR 162.11 (4), does the department intend to require that a recipient breach a contract? Perhaps the participation of a recipient could be conditioned upon the amendment of a contract.

e. Section NR 162.15 (1) (i), (j) and (k) make use of the word “promptly.” The rule would be clearer if a specific time period were expressed. Also, in sub. (1) (n) 2. k., the contents of the appendix should be described.

f. In s. NR 162.18 (2) (intro.), who decides whether a change in a project will require “the execution of an amendment”?

g. Section NR 162.19 (2) is unclear. Is this subsection intended to regulate the method by which a recipient seeks a rehearing? Is the subsection meant to describe the appellate procedure in ch. 227, Stats.? If so, it would be better to describe the ch. 227, Stats., procedure in a note to the rule along with appropriate cross-references.

h. Section NR 162.24 (1) refers to an administrative fee. This provision should be more explicit in terms of who must pay the fee; why the fee must be paid; and when the fee must be paid.

i. In s. NR 165.03 (4), it appears that the word “the” should be inserted before the phrase “state trust fund.”

j. In s. NR 165.05 (2) (L), it appears that the word “who” should be deleted. [See also s. NR 162.07 (2) (L) 2.]

k. Section NR 165.07 (3) (f) is unclear.

l. In s. NR 165.09 (6), it appears that the word “allows” in the last sentence should be replaced by the word “allow.”

m. In s. NR 165.14, it appears that sub. (3) should be rewritten to read:

(3) The recipient and contractors...until the later of any of the following:

(a) The expiration of 3 years from the date of project completion.

(b) A period greater than 3 years, if required by statute, rule or contract or other agreement.

n. In s. NR 165.14 (4), what are “federal and state auditing standards”?